

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Carnegie Hill Financial Inc., et al.,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	No. 99-CV-2592
	:	
Dale B. Krieger, et al.,	:	
Defendants.	:	
	:	

Richard A. Ruderman, et al.,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	No. 99-CV-5511
	:	
Pitcairn Trust Company, et al.,	:	
Defendants.	:	
	:	

**MEMORANDUM**

**GREEN, S.J.**

**July       , 2001**

Presently before the court is Plaintiff Carnegie Hill Financial Inc. and Defendant Pitcairn Trust Company's Motion to Compel the unredacted tax returns of Defendant Dale B. Krieger and Plaintiff Richard A. Ruderman. For the foregoing reasons, said motion will be granted in part and denied in part.

**I.       PROCEDURAL HISTORY**

On May 20, 1999, Carnegie Hill Financial Inc. ("CHFI") instituted a lawsuit against Dale B. Krieger ("Krieger") and Richard A. Ruderman ("Ruderman") for trademark infringement, breach of contract, breach of fiduciary obligations, breach of confidential relations, waste of

corporate assets, and tortious inference with contract.<sup>1</sup> On November 5, 1999, Ruderman and Krieger instituted a lawsuit against Pitcairn Trust Company (“Pitcairn”) for breach of fiduciary duty and tortious interference with business relationships.<sup>2</sup> Both actions were consolidated for discovery purposes. (See Order, March 3, 2000.) During discovery, CHFI and Pitcairn requested the tax returns of Krieger and Ruderman for the years 1996 through 1999. Krieger and Ruderman only provided redacted copies of their 1999 tax returns. CHFI and Pitcairn filed a Motion to Compel the unredacted tax returns of Krieger and Ruderman for the years 1996 through 1999.<sup>3</sup> Krieger and Ruderman filed a Response in opposition to said motion. Pursuant to this court’s Order, Krieger and Ruderman submitted unredacted copies of their 1996, 1997, 1998 and 1999 tax returns for an in camera inspection by the court. (See Order, June 11, 2001.)

## **II. DISCUSSION**

### ***A. Motion to Compel***

The Federal Rules of Civil Procedure provide for liberal discovery. See Pacitti v. Macy’s, 193 F.3d 766, 777 (3d Cir. 1999)(citations omitted); Fed.R.Civ.P. 26(b)(1). In general,

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<sup>1</sup>Also joining CHFI as plaintiffs are Carnegie Hill Securities and Carnegie Hill Asset Management, Inc. Krieger, Ruderman & Co., LLC, KR Securities, LLC and KR Financial, LLC are also named as defendants.

<sup>2</sup>Krieger, Ruderman & Co., LLC, KR Securities, LLC, KR Financial, LLC are also listed as plaintiffs. Dirk Junge, Alvin A. Clay, III and Lawrence R. Bardfeld are also named as defendants.

<sup>3</sup>CHFI and Pitcairn initially moved to compel “full and complete responses” to several documents. (See CHFI and Pitcairn’s Mot. to Compel.) On March 21, 2001, however, the moving parties withdrew, without prejudice, “their Motion to Compel Discovery except as it relates to their request that Dale B. Krieger and Richard A. Ruderman be compelled to produce their tax returns and accompanying schedules for the years 1996 through 1999.” (See Letter of Steven L. Friedman) (emphasis in original).

[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Fed.R.Civ.P. 26(b)(1). In determining whether a tax return is properly discoverable, courts apply a two-part test: (1) the tax returns must be relevant to the subject matter of the litigation; and (2) the information sought in the tax returns is not readily available from other sources. See Fort Washington Resources, Inc. v. Tannen, 153 F.R.D. 78, 80 (E.D.Pa. 1994); In re Sunrise Securities Litigation, 130 F.R.D. 560, 578 (E.D.Pa. 1989). The party seeking to obtain the tax returns bears the burden of demonstrating their relevance; once relevance has been established, the party resisting discovery bears the burden of proving that alternative sources would provide the required information. See In re Sunrise Securities Litigation, 130 F.R.D. at 578.

CHFI and Pitcairn move to compel the unredacted tax returns of Krieger and Ruderman on the ground that the tax returns are relevant to several claims raised by CHFI against Krieger and Ruderman, including breach of contract, breach of fiduciary duty, and waste of corporate assets. Additionally, CHFI and Pitcairn argue that the tax returns are relevant to determine whether “Krieger and Ruderman are fraudulently transferring their assets in an attempt to place them beyond the reach of their creditors, including CHFI.” (See CHFI and Pitcairn’s Mot. to Compel at 19, n.8.)

Krieger and Ruderman oppose the motion, arguing that their tax returns, in their unredacted form, are irrelevant to this matter, because the returns were filed jointly with their

spouses who are not parties to this litigation. Krieger and Ruderman assert that they have “already produced redacted forms of the Kriegers’ and Rudermans’ tax returns that were edited to exclude income earned by Mrs. Krieger and Mrs. Ruderman.” (See Krieger and Ruderman’s Resp. at 14.) Moreover, Krieger and Ruderman argue that the information sought by the moving parties is available from other sources, such as W-2 forms.

Upon an in camera inspection, I conclude that Krieger and Ruderman’s unredacted Federal income tax returns for the years 1997, 1998 and 1999 are relevant to this matter and therefore discoverable. The information contained in those tax returns is relevant to allegations that Krieger and Ruderman breached their 1997 employment agreements with CHFI by allegedly disgorging benefits from CHFI and breached their fiduciary duties by allegedly engaging in other business activities while employed with CHFI from 1997 to 1999. While Krieger and Ruderman argue against discovery of those materials, there is no evidence that the information sought in those tax returns can be readily obtained from other sources.<sup>4</sup> Thus, Krieger and Ruderman failed to meet their burden, and their 1997, 1998 and 1999 tax returns must be produced. By contrast, Krieger and Ruderman’s 1996 tax returns are not discoverable, because the moving parties failed to demonstrate their relevance to this matter. For the foregoing reasons, CHFI and Pitcairn’s Motion to Compel the unredacted Federal income tax returns of Krieger and Ruderman will be granted as to Krieger and Ruderman’s 1997, 1998 and 1999 tax returns and denied as to Krieger and Ruderman’s 1996 tax returns.

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<sup>4</sup>Contrary to Krieger and Ruderman’s contention, W-2 forms are not appropriate substitutes for Krieger and Ruderman’s unredacted tax returns. W-2 forms do not reflect interests and dividends a taxpayer receives. Whether Krieger and Ruderman received interests, dividends and/or other income from sources other than CHFI while employed by CHFI is relevant to CHFI’s breach of contract and breach of fiduciary duty claims.

***B. Attorneys' Fees***

Fed.R.Civ.P. 37(a)(4)(A) provides as follows:

If the motion [to compel discovery] is granted . . . the court shall, after affording an opportunity to be heard, require [the non-moving party] to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

CHFI and Pitcairn argue that they are entitled to attorneys' fees, because Krieger and Ruderman failed to produce their tax returns without any reasonable basis. Krieger and Ruderman argue that they are entitled to attorneys' fees, because CHFI and Pitcairn's Motion to Compel is without merit. Upon reviewing the request of both parties, I conclude that neither party is entitled to attorneys' fees. CHFI and Pitcairn are not entitled to attorneys' fees, because the Krieger and Ruderman acted in good faith to comply with discovery requests. Krieger and Ruderman are not entitled to attorneys' fees, because CHFI and Pitcairn's Motion to Compel has merit. Thus, the parties' requests for attorneys' fees will be denied.

An appropriate Order follows.

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Dale B. Krieger, et al.,	:	
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Richard A. Ruderman, et al.,	:	
Plaintiffs,	:	
	:	
v.	:	No. 99-CV-5511
	:	
Pitcairn Trust Company, et al.,	:	
Defendants.	:	
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**ORDER**

**AND NOW**, this        day of July, 2001, upon consideration of Carnegie Hill Financial Inc. and Pitcairn Trust Company's Motion to Compel the unredacted Federal income tax returns of Dale B. Krieger and Richard A. Ruderman for the years 1996 through 1999 and the responses thereto, **IT IS HEREBY ORDERED** that said motion is **GRANTED** as to Krieger and Ruderman's 1997, 1998 and 1999 income tax returns and **DENIED** as to Krieger and Ruderman's 1996 income tax returns. **IT IS FURTHER ORDERED** that copies of Krieger and Ruderman's 1997, 1998 and 1999 Federal income tax returns shall be produced within ten (10) days of this Order. All requests for attorneys' fees are **DENIED**.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.